

ORIGINAL

FILED

JUN 29 2015  
United States Bankruptcy Court  
San Jose, California

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DIVISION OF CALIFORNIA -DIVISION 5

JAMES MADISON KELLEY,  
Debtor

AP Case No: 10-05245

JAMES MADISON KELLEY,  
Plaintiff/Debtor

*Assigned for all purposes to:*  
Honorable Judge Dennis Montali  
Courtroom: 320

v.

JPMORGAN CHASE BANK, NA;  
WASHINGTON MUTUAL BANK;  
DOES (1-20),  
Defendants.

**PLAINTIFFS /DEBTORS NOTICE OF  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS**

**HEARING:**  
**Date: August 5, 2015**  
**Time: 1:30 PM**  
**Room: 3070**

**TO PLAINTIFFS AND ITS ATTORNEYS:**

**YOU ARE HEREBY NOTICED** that on August 5, 2015 at 1:30 PM in the above entitled court James Madison Kelley, Plaintiff/Debtor ("Kelley" or "Plaintiff") will hereby move the

1 Court for an order granting Kelley Partial Summary Judgment or in the alternative,  
2 summary adjudication in favor of Kelley and against JP Morgan Chase Bank, N.A.,  
3 Washington Mutual Bank, and Does 1 through 20 on the first five counts of his Third  
4 Amended Complaint.

5 This motion is made upon the grounds there are no triable issues of material fact with  
6 respect to the elements of Kelley's claims and Kelley is entitled to partial summary  
7 judgment as a matter of law *See* Fed. R. Civ. P. 56(c) Specifically, the undisputed evidence  
8 will show that Kelley rescinded the first loan under TILA 15 U.S.C. § 1635 on August 24,  
9 2009 and the second loan on June 24, 2009; Defendants have no standing to initiate a  
10 foreclosure or collect payments under the contracts. The undisputed evidence will also  
11 show Kelley was induced into the First Loan with undisclosed parties with false terms;  
12 Chase has attempted to hide the sale of the loan to private investor by backdating a loan  
13 transfer; the indorsements on the Promissory Note (UMF #1) and on the HELOC Credit  
14 Agreement (UMF # 36) are fraudulent, affixed for the sole purpose of converting the paid to  
15 order note as a "bearer instrument" which pursuant to California law renders the Note  
16 unenforceable.

17 Defendants cannot raise a triable issue of fact with regards to the claims the loans were  
18 rescinded; and the "Notes" have been void by Chase's acts. In the alternative, Kelley  
19 moves for summary adjudication of the following causes of action asserted against  
20 Defendants in his Third Amended Complaint:

- 21 1) First Claim for Loan Contract Invalidity;
- 22 2) Second Claim for TILA Rescission of First Loan
- 23 3) Third Claim for TILA rescission of Second Loan
- 24 4) Fourth Claim for Objection to Proof of Claim 2
- 25 5) Fifth Claim for Objection to Proof of Claim 3

1 For each of these causes of action, the Undisputed Material Facts demonstrate that  
2 Defendants cannot raise a triable issue of fact with respect to the elements of each of those  
3 claims. This Motion will be based on this Notice of Motion and Motion for Summary  
4 Judgment, or in the alternative, Summary Adjudication, the attached Memorandum of  
5 Points and Authorities, the Separate Statement of Undisputed Material Facts, the  
6 Declaration of Dr. James M. Kelley, the concurrently filed Request for Judicial Notice, the  
7 pleadings and other documents filed in this action and upon such other matters the Court  
8 may consider.  
9

10 Date: June 29, 2015

DR. JAMES M. KELLEY

12 James M. Kelley  
13  
14 Plaintiff/Debtor

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: Parker Ibrahim & Berg LLP, 695 Town Center Drive, 16<sup>th</sup> Floor, Costa Mesa, CA 92626.

A true and correct copy of the foregoing document entitled (*specify*): **STATEMENT IN SUPPORT OF UNITED STATES TRUSTEE'S MOTION TO CONVERT OR DISMISS CASE BY SECURED CREDITOR JPMORGAN CHASE BANK, N.A.; DECLARATION OF SHERI M. KANESAKA** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) June 15, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below: notices@becket-lee.com; Ed.Kunnes@kts-law.com; claims@recoverycorp.com; ecfcamb@piteduncan.com; cyoo@alvaradosmith.com; USTPRegion17.SJ.ECF@usdoj.gov; shining.hsu@usdoj.gov; john.wesolowski@usdoj.gov; john@mlnariklaw.com; notice@bkcyllaw.com;

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) June 19, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) June 19, 2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 19, 2015

Date

Printed Name

~~James M. Kelley~~ JAMES Kelley

James M. Kelley

Served by Notice of Electronic Filing

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John Wesoloski  
U.S. TRUSTEE

LCS FINANCIAL SERVICES CORPORATION

AND ALL OTHER Interested Parties of  
Record.